IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

J U D G M E N T

Alladin vs. Shanti Lal

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S.B.Civil First Appeal No.1/1988 under Section 96 C.P.C. against the judgment and decree dated 20.10.1987 passed by Shri Ashok Kapur RHJS, Additional District Judge Bundi in Civil Suit No.7/85 decreeing the suit of the plaintiff respondent.

Date of Judgment :::::: September 11, 2006

PRESENT

HON'BLE MR.JUSTICE KHEM CHAND SHARMA

Mr.Kamlakar Sharma for appellant.
Mr.Tarun Jain for respondent.

BY THE COURT (ORAL):-

The facts in brief giving rise to this appeal are that the plaintiff respondent filed a suit against the defendant appellant for recovery of an amount of

Rs.48,985/- alleging therein that on 1.1.1982 the defendant had executed 12 hundies worth Rs.3500/- each in the name of Allanoor which were due for payment on different dates. When the hundies became ripe for payment, the plaintiff presented them to Allanoor but Allanoor refused to honour them. The plaintiff then informed the defendant through registered letter dated 11.6.1984 regarding dishonouring the hundies, which was received by him on 13.6.1984. Therefore, the plaintiff claimed the principal amount Rs.42,000/- of the 12 hundies along with the interest at the rate of 12% per annum amounting to Rs.6,985/- in all Rs.48,985/-.

2. In the written statement, the defendant appellant denied the allegations made in the plaint and further stated that no amount was due against him. Therefore, there was neither any question of executing the hundies nor the plaintiff was entitled to recover any amount from him.

3. In the additional pleas the defendant mentioned that the plaintiff and the defendant had purchased truck No.RRM 6457 in partnership from one Gafoor Khan for Rs. 80,000/- on 1.12.1981. Out of which the defendant had paid a sum of Rs.10,000/- to the plaintiff and up to 31.12.1981 the truck was plied in partnership but during this period the truck

met with an accident and was completely damaged. Therefore, the plaintiff refused to run the truck in partnership. In such circumstances, it was agreed that both the persons would equally bear the expenses of the repairs of the truck. In accordance with the agreement the damage was valued which came to Rs.42,000/-and it was agreed that the defendant would pay off the entire charges for the damages amounting to Rs.42,000/- and claimed an adjustment of Rs.21,000/- to be paid by the plaintiff on account of the repairs. Thus, out of the total value of the truck Rs.21,000/- were to be deducted and it was agreed that the truck would be registered in the name of the defendant. Out of balance amount of Rs.59,000/- only Rs.28,000/- were to be paid to the plaintiff which was paid in cash and thereafter the plaintiff got the truck registered in the name of the defendant. Hence, no amount was outstanding against the defendant.

4. On the basis of the pleadings of the parties, the learned trial court framed as many as three issues.

5. To prove his case the plaintiff himself appeared as a witness. From the side of the defendant four witnesses namely; DW.1 Alladin, DW.2 Allanoor, DW.3 Mukhtyar and DW.4 Ismil were examined and some documents were also exhibited.

6. Learned trial court and after recording evidence of the parties and hearing both the sides, vide impugned judgment and decree dated 20th October, 1987 decreed the suit of the plaintiff. Hence this appeal.

7. Learned counsel for the appellant has contended that the learned trial court has neither properly appreciated nor critically examined the evidence of the defendant appellant while deciding the issues and, therefore, the impugned judgment and decree deserve to be reversed and the suit of the plaintiff is liable to be dismissed.

8. On the other hand, learned counsel appearing for the plaintiff respondent while supporting the impugned judgment has contended that the learned trial court has passed the judgment after taking into consideration the evidence adduced by the parties and also the material available on record. Therefore, no interference is required to be called for and the appeal is liable to be dismissed.

9. After hearing learned counsel for the parties, I have gone through the material and evidence available on record as well as the impugned judgment.

10. Sofar as issues No. 1 is concerned, the burden to

prove the same was upon the defendant appellant. Defendant Alladin in his statement has stated that truck No.6457 was purchased by him and Shanti Lal both in partnership for Rs.80,000/- on 1.12.1979 from Gafur Khan and he paid Rs.10,000/-. He was to pay half of the purchase amount. An agreement (Ex.1) was reduced in writing in this regard. Truck was registered in the name of Gafur Khan. He borrowed Rs.70,000/- from Shanti Lal and paid the same to Gafur Khan out of this amount he was to return Rs.40,000/- to Shanti Lal. The witness further deposed that when the truck met with an accident, he spent Rs.42,000/- towards repairs of the same out of which he was to bear Rs.21,000/- and Rs.21,000/- were to be paid by Shanti Lal. After accident, the accounts were settled and he made payment of Rs.70,000/- to Shanti Lal for which a stamp was also given to him by Shanti Lal mentioning therein that the plaintiff had received the entire amount but in his cross-examination this witness has deposed that he does not know where the stamp is. In his statement under Order 10 rule 1 C.P.C. this witness has admitted execution of the 20 hundies by him out of these 20 hundies he made payment of 8 hundies so the same were returned to him. He has also admitted his signatures on the stamp Ex.15 also. The witness deposed further that when he asked for return of the hundies then the plaintiff Shanti Lal told that their account was clear

so what he will do of the hundies. DW.2 Allanoor in his statement has stated that the truck was purchased in Rs.80,000/- in partnership by Shanti Lal and Alladin. Regarding payment of the amount this witness does not disclose any fact. He has denied the fact that accounts between the plaintiff and respondent were settled in his presence. DW.3 Mustak has also stated that the truck was purchased in partnership by plaintiff and defendant and truck met with an accident due to which they suffered loss of Rs.40-50,000/-. DW.4 Ismail has deposed that the truck was purchased in partnership by plaintiff and defendant for a consideration of Rs.80,000/- and Alladin paid Rs.10,000/-. The truck met with an accident. The witness denied the fact that the accounts between the parties were settled in his presence.

11. As against this, the plaintiff in his statement has deposed that the defendant Alladin executed the hundies in his favour through Allanoor. Allanoor did not make payment of the amount then he sent notice Ex.13 to Alladin. He has denied the suggestion that defendant Alladin made payment of the amount of the hundies but he did not return the same to him on the pretext that as the accounts were settled and payment of the hundies were made, the hundies were of no importance. In support of his oral evidence, the plaintiff

also produced the stamp dated 1.1.1982 (Ex.15) executed by the defendant Alladin in favour of the plaintiff accepting the fact of his executing in all 20 hundies for Rs.70,000/- for Rs.3500/- each.

12. From the evidence of the parties it emerges that the case of the defendant before the trial court was that he return the amount but has not placed on record any evidence to prove this fact. As against this, the plaintiff has been able to prove by oral as well as by documentary evidence that Rs.70,000/- were outstanding towards the defendant for which the hundies were executed. In this view of the matter, I am of the opinion that the learned trial court has committed no error in deciding issue No.1 against the defendant appellant and in favour of the plaintiff respondent.

13. In addition to the oral as well as documentary evidence of the parties if the written statement of the defendant appellant be taken into consideration, this fact is very well clear that Rs.70,000/- were out standing towards the defendant. As per the written statement, the truck was purchased for a consideration of Rs.80,000/-. Out of which the defendant paid Rs.10,000/- from his own sources and Rs.70,000/- were given to the owner of the

truck after borrowing the same from plaintiff. Rs.42,000/- were paid by the defendant towards the repairs of the truck. After accident, the truck was registered in the name of the defendant in compliance of the agreement entered into between the parties. Thus, the defendant made payment of Rs.52,000/- from his own sources while the total amount spent in the purchase of the truck and in repairs comes to Rs.1,22,000/- (Rs.80,000/- paid to the owner of the truck + Rs.42,000/- spent in the repairs). Out of this amount the defendant paid only Rs.52,000/-. Thus, Rs.70,000/- was out standing against him for which he executed 20 hundies of Rs.3,500/- each. Out of 20 hundies, payment of Rs.28,000/- towards 8 hundies was made and thus, Rs.42,000/- remained out standing towards the defendant. In this view of the matter, I find that the learned trial court has committed no error in deciding issue No.1 against the defendant and in favour of the plaintiff.

14. So far as issue No.2 is concerned, the learned trial court taking into consideration the fact that there was no mention in the hundies regarding rate of interest, has awarded 6% interest per annum on the principal sum. Learned counsel for the appellant has not been able to show that such rate of interest is excessive or could not have been awarded. Thus, I find no error in the finding of learned

trial court on issue No.2 also.

15. For the discussions above, the first appeal fails and is hereby dismissed with no orders as to cost.

(K.C.Sharma),J.

Bairwa